

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-04-22

**DATE:** March 11, 2004  
**TO:** State Survey Agency Directors  
**FROM:** Director  
Survey and Certification Group  
**SUBJECT:** Overnight Stays in Ambulatory Surgical Centers – Clarification Effective Immediately

Letter Summary

- This letter clarifies the issue of overnight stays and their impact with respect to the Medicare definition of an Ambulatory Surgical Center (ASC).
- There should be no planned overnight stays in an ASC for Medicare patients. Any overnight stay for a Medicare patient should only result from unanticipated conditions requiring continued observation or care within the capability of the ASC and should be neither a planned nor routine occurrence.

The purpose of this memorandum is to clarify policy regarding overnight stays in an ambulatory surgical center (ASC). Participation as a Medicare-certified ASC is limited to distinct entities that operate exclusively for the purpose of providing surgical services to patients not requiring hospitalization.

Procedures permitted in an ASC (42 CFR 416.65) are those that generally do not require extended lengths of stay or extensive recovery or convalescent time. Such procedures require the use of a dedicated operating room (or suite), and a post-operative recovery room, or short-term (not overnight) convalescent room. Regulations do not allow for planned overnight recoveries in an ASC for approved procedures performed on Medicare patients and ASC rules do not permit the performance of surgical procedures on Medicare patients that would require transfer to a hospital.

When it is determined in advance that a Medicare patient requires overnight recovery and care following a surgical procedure, the surgery should not be performed in an ASC even though the procedure may be on the list of Medicare approved ASC procedures. Overnight stays following surgery in an ASC should be infrequent and only occur in cases where an unanticipated medical condition requires medical observation or care within the capabilities of the ASC. In all other situations involving Medicare patients, it is expected that an ASC would transfer the patient to an appropriate facility if an overnight stay is required. An ASC that routinely provides overnight recovery stays, regardless of the payment source, may no longer meet the regulatory definition of an ASC and will jeopardize its Medicare certification.

To evaluate compliance with these requirements, the surveyor should verify that:

- The ASC has a written transfer agreement with a local hospital, or that all physicians performing surgery at the ASC have admitting privileges at a local hospital;

Medicare patients are scheduled only for procedures on the CMS approved list and that no Medicare patients are being scheduled for planned overnight stays;

Any overnight stay for a Medicare patient is the result of unanticipated conditions requiring continued observation or care within the capability of the ASC and is neither a planned nor routine occurrence.

With regard to non-Medicare patients, a Medicare-certified ASC may provide services to an individual who is expected to require an overnight stay if the ASC transfers the non-Medicare patients to overnight care facilities (such as skilled nursing facilities, recovery care centers, and other non-hospital, post-operative care facilities), on a routine or non-routine basis, without jeopardizing their Medicare certification. However, an ASC that routinely provides overnight recovery stays in the ASC itself, regardless of the payment source, may no longer meet the definition of an ASC, and will jeopardize its Medicare certification.

If you have further questions regarding this matter, please contact Mary Hayes at (410) 786-3507 or via E-mail at [Mhayes@cms.hhs.gov](mailto:Mhayes@cms.hhs.gov).

**Effective Date:** The information contained in this memorandum is current policy and is in effect.

**Training:** This clarification should be shared with all survey and certification staff, surveyors, their managers, and the state/RO training coordinator.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management